

109TH CONGRESS
2D SESSION

S. 3457

To provide a national franchise and other regulatory relief to video service providers who offer a-la-carte programming for cable television, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2006

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide a national franchise and other regulatory relief to video service providers who offer a-la-carte programming for cable television, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumers Having Op-
5 tions in Cable Entertainment Act” or the “CHOICE Act”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—In this Act:

8 (1) A-LA-CARTE.—The term “a-la-carte” means
9 offering a channel on an individual per-channel basis

1 rather than solely as part of a package or tier of
 2 programming.

3 (2) DIGITAL VIDEO SERVICE.—The term “dig-
 4 ital video service” means—

5 (A) the two-way transmission of video serv-
 6 ice using digital video compression; and

7 (B) subscriber interaction, if any, required
 8 for the selection or use of such service.

9 (3) ELIGIBLE VIDEO SERVICE PROVIDER.—The
 10 term “eligible video service provider” means a video
 11 service provider that—

12 (A)(i) has an attributable interest in a
 13 cable channel (as defined in section 602(4) of
 14 the Communications Act of 1934 (47 U.S.C.
 15 522(24))) that is currently offered on the ex-
 16 panded basic tier (within the meaning of section
 17 623(b)(7) of that Act (47 U.S.C. 543(b)(7)));

18 (ii) offers that cable channel on an a-la-
 19 carte basis to its subscribers of digital video
 20 service in addition to any other channel bundles
 21 it offers as of the date of enactment of this Act;

22 (iii) does not prohibit any other multi-
 23 channel video programming distributor (as de-
 24 fined in section 602(13) of the Communications
 25 Act of 1934 (47 U.S.C. 522(24))) from offering

1 that channel on an a-la-carte basis to its sub-
 2 scribers; and

3 (iv) files with the Commission a declara-
 4 tion of intention to offer to its digital video
 5 service subscribers on an a-la-carte basis any
 6 cable channels it carries that are offered to it
 7 on an a-la-carte basis; or

8 (B) does not have an attributable interest
 9 in a cable channels but files with the Commis-
 10 sion a declaration of intention to offer to its
 11 digital video service subscribers on an a-la-carte
 12 basis any cable channels it carries that are of-
 13 fered to it on an a-la-carte basis.

14 (4) VIDEO SERVICE.—The term “video service”
 15 means—

16 (A) video programming;

17 (B) interactive on demand services; and

18 (C) other programming services.

19 (5) VIDEO SERVICE PROVIDER.—The term
 20 “video service provider”—

21 (A) means a provider of video service that
 22 utilizes a public right-of-way in the provision of
 23 such service; and

24 (B) does not include—

1 (i) a provider of direct broadcast sat-
 2 ellite service;

3 (ii) any person providing video pro-
 4 gramming to end users using radio com-
 5 munication;

6 (iii) any other provider of video serv-
 7 ice that does not use a public right-of-way
 8 in the provision of its service; or

9 (iv) any person providing video service
 10 by means of a commercial mobile service,
 11 unless such person has substantially re-
 12 placed an eligible video service provider de-
 13 scribed in subparagraph (A) by occupying
 14 a position in the video service market com-
 15 parable to that occupied by such provider.

16 (b) COMMON TERMINOLOGY.—Except as otherwise
 17 provided in subsection (a), terms used in this Act shall
 18 have the same meaning given to such terms under sections
 19 3, 332(d), and 602 of the Communications Act of 1934
 20 (47 U.S.C. 153, 332(d), and 522).

21 **SEC. 3. REGULATORY RELIEF FOR ELIGIBLE VIDEO SERV-**
 22 **ICE PROVIDERS.**

23 (a) ELIGIBLE VIDEO SERVICE PROVIDERS.—

24 (1) REGULATORY RELIEF.—An eligible video
 25 service provider may not be required—

1 (A) to obtain a State or local video fran-
 2 chise;

3 (B) to build out its video distribution sys-
 4 tem in any particular manner; or

5 (C) to provide leased or common carrier
 6 access to its video distribution facilities and
 7 equipment to any other video service provider.

8 (2) BUILD-OUT ENCOURAGED; DISCRIMINATION
 9 NOT PERMITTED.—It is the policy of the United
 10 States that an eligible video service provider—

11 (A) should build out to provide service to
 12 the greatest number of communities practicable;
 13 and

14 (B) should comply fully with the require-
 15 ments of sections 202 and 621(a)(3) of the
 16 Communications Act of 1934 (47 U.S.C. 202
 17 and 541(a)(3)) prohibiting the denial of access
 18 to service of any group of residential sub-
 19 scribers because of the income of residents of
 20 the area in which the group resides.

21 (b) LOCAL GOVERNMENT AUTHORITY TO REGU-
 22 LATE.—

23 (1) FEE FOR MANAGING LOCAL GOVERNMENT’S
 24 PUBLIC RIGHTS-OF-WAY.—

1 (A) COMPENSATING LOCAL GOVERN-
2 MENTS.—

3 (i) IN GENERAL.—A local government
4 may require an eligible video service pro-
5 vider to pay a reasonable fee on an annual
6 basis to the units of local government in
7 which the video service provider provides
8 video service for the purpose of compen-
9 sating such local government for the costs
10 that it incurs in managing the public
11 rights-of-way used by such provider.

12 (ii) AMOUNT OF FEE.—The fee im-
13 posed under clause (i) shall not exceed 3.7
14 percent of gross video revenues. Notwith-
15 standing the preceding sentence, a local
16 government may petition the Commission
17 for, and the Commission may grant, a fee
18 that exceeds 3.7 percent of gross video rev-
19 enues to the extent that the local govern-
20 ment demonstrates that the higher fee is
21 necessary to cover its costs of managing
22 the public rights-of-way used by the pro-
23 vider.

24 (iii) IN-KIND CONTRIBUTIONS PRO-
25 VIDED TO STATE AND LOCAL GOVERN-

1 MENTS.—A local government may not so-
 2 licit in-kind contributions from an eligible
 3 video service provider unless the value of
 4 the in-kind contribution is credited to the
 5 provider as part of that fee described in
 6 clause (i).

7 (iv) INSTITUTIONAL NETWORKS PRO-
 8 VIDED TO STATE AND LOCAL GOVERN-
 9 MENTS.—A local government may not so-
 10 licit the provision of institutional network
 11 services (as defined by the Federal Com-
 12 munications Commission) from an eligible
 13 video service provider on a free or reduced
 14 fee basis unless the value of the services
 15 provided for free, or the amount of the re-
 16 duction in the fee, is credited to the pro-
 17 vider as part of the fee described in clause
 18 (i).

19 (B) DEFINITION.—For purposes of this
 20 paragraph, the term “gross video revenues”—

21 (i) means all consideration of any
 22 kind or nature received by an eligible video
 23 service provider from its subscribers for
 24 the provision of video service within a mu-
 25 nicipality, including—

- 1 (I) cash;
- 2 (II) credits;
- 3 (III) property;
- 4 (IV) institutional networks; and
- 5 (IV) in-kind contributions (serv-
- 6 ices or goods); but
- 7 (ii) does not include—
- 8 (I) revenue not actually received,
- 9 even if billed, including bad debt;
- 10 (II) revenue received by any affil-
- 11 iate or any other person in exchange
- 12 for supplying goods or services used
- 13 by an eligible video service provider to
- 14 provide video service;
- 15 (III) refunds, rebates, or dis-
- 16 counts provided to—
- 17 (aa) subscribers;
- 18 (bb) leased access providers;
- 19 (cc) advertisers; or
- 20 (dd) the municipality;
- 21 (IV) revenue from services not
- 22 classified as video service, including—
- 23 (aa) revenue received from
- 24 telecommunications services;

1 (bb) revenue received from
2 information services, including
3 Internet access;

4 (cc) revenue received in con-
5 nection with advertising;

6 (dd) revenue received in con-
7 nection with home shopping serv-
8 ices; or

9 (ee) any other revenue at-
10 tributed by an eligible video serv-
11 ice provider to non-video service
12 in accordance with any applicable
13 rules, regulations, standards, or
14 orders;

15 (V) revenue paid by subscribers
16 to home shopping programmers di-
17 rectly from the sale of merchandise
18 through any home shopping channel
19 offered as part of the video service;

20 (VI) any tax of general applica-
21 bility—

22 (aa) imposed upon an eligi-
23 ble video service provider or upon
24 subscribers by a Federal, State,

city, or any other governmental
entity; and

(bb) required to be collected
by a eligible video service pro-
vider and remitted to the taxing
entity, including—

(AA) sales or use taxes;

(BB) gross receipts
taxes;

(CC) excise taxes;

(DD) utility users
taxes;

(EE) public service
taxes;

(FF) communication
taxes; and

(GG) the fee described
in subclause (VI);

(VII) the provision of video serv-
ice to public institutions, public
schools, or governmental entities at no
charge;

(VIII) any foregone revenue from
the provision of free or reduced-cost
video service by an eligible video serv-

1 ice provider to any person, includ-
2 ing—

3 (aa) the municipality;

4 (bb) other public institu-
5 tions; and

6 (cc) other institutions;

7 (IX) sales of capital assets or
8 sales of surplus equipment;

9 (X) reimbursement by program-
10 mers of marketing costs incurred by
11 an eligible video service provider for
12 the introduction or promotion of pro-
13 gramming;

14 (XI) directory or Internet adver-
15 tising revenue, including revenue
16 from—

17 (aa) yellow page sales;

18 (bb) white page sales;

19 (cc) banner advertisement;

20 and

21 (dd) electronic publishing;

22 and

23 (XII) copyright fees paid to the
24 United States Copyright Office.

1 (2) RIGHTS-OF-WAY DISPUTES TO BE RE-
2 SOLVED BY THE COMMISSION OR FEDERAL
3 COURTS.—Any dispute regarding the application or
4 amount of fees charged under paragraph (1) shall,
5 upon request of a local unit of government or af-
6 fected video service provider, be resolved—

7 (A) by the Commission; or

8 (B) by filing a claim in the district court
9 of the United States that meets applicable re-
10 quirements relating to venue under section
11 1931 of title 28, United States Code.

12 (3) FEE APPEARANCE ON SUBSCRIBER'S
13 BILL.—A video service provider may designate that
14 portion of a subscriber's bill attributable to the fee
15 imposed under paragraph (1) as a separate item on
16 the subscriber's bill.

17 (c) APPLICABILITY OF COMMUNICATIONS ACT OF
18 1934.—

19 (1) IN GENERAL.—Except as provided in this
20 subsection, the Communications Act of 1934 (47
21 U.S.C. 151 et seq.) shall not apply to the provision
22 of video service by an eligible video service provider.

23 (2) RETRANSMISSION CONSENT OBLIGA-
24 TIONS.—An eligible video service provider shall be
25 subject to the retransmission consent obligations of

1 section 325(b) of the Communications Act of 1934
2 (47 U.S.C. 325(b)).

3 (3) TITLE VI PROVISIONS.—An eligible video
4 service provider shall—

5 (A) not be subject to any provision of title
6 VI of the Communications Act of 1934 (47
7 U.S.C. 521 et seq.), except as otherwise pro-
8 vided in this paragraph;

9 (B) except as provided in paragraph (4),
10 carry and determine the appropriate channel
11 positioning and grouping, for the area in which
12 it is providing video service, of up to 3 public,
13 educational, or governmental use channels as
14 required under section 611 of that Act (47
15 U.S.C. 531);

16 (C) carry the signals of local commercial
17 television stations as required under section 614
18 of that Act (47 U.S.C. 534);

19 (D) carry the signals of local noncommer-
20 cial educational television stations as required
21 under section 615 of that Act (47 U.S.C. 535);

22 (E) be subject to the regulation of carriage
23 agreements under section 616 of that Act (47
24 U.S.C. 536);

1 (F) be subject to the antidiscrimination
2 provisions of section 621(a)(3) of that Act (47
3 U.S.C. 541(a)(3));

4 (G) be subject to the requirements regard-
5 ing obscene or indecent programming under
6 section 624(d)(2) of that Act (47 U.S.C.
7 544(d)(2));

8 (H) be entitled to the benefits and protec-
9 tions under section 624(f)(1) of that Act (47
10 U.S.C. 544(f)(1)) regarding the content of
11 video service;

12 (I) be subject to the emergency informa-
13 tion requirements under section 624(g) of that
14 Act (47 U.S.C. 544(g));

15 (J) be subject to the consumer electronics
16 equipment capability requirements under sec-
17 tion 624A of that Act (47 U.S.C. 545);

18 (K) be entitled to the benefits and protec-
19 tions under section 628 of that Act (47 U.S.C.
20 548);

21 (L) be subject to the requirements under
22 section 629 of that Act (47 U.S.C. 549);

23 (M) protect the personally identifiable in-
24 formation of its subscribers in the same manner
25 as is required of cable operators with respect to

1 subscribers to cable services under section 631
2 of that Act (47 U.S.C. 551);

3 (N) be entitled to the benefits and protec-
4 tions under section 633 of that Act (47 U.S.C.
5 553);

6 (O) be subject to the equal employment
7 provisions as required under subsections (a)
8 through (h) of section 634 of that Act (47
9 U.S.C. 554);

10 (P) be subject to criminal or civil liability
11 under section 638 of that Act (47 U.S.C. 558);

12 (Q) be subject to the penalties prescribed
13 for the transmission of obscene programming
14 under section 639 of that Act (47 U.S.C. 559);
15 and

16 (R) be required to comply with the scram-
17 bling requirements under section 640 of that
18 Act (47 U.S.C. 560).

19 (4) UTILIZATION AND OTHER REQUIREMENTS
20 FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL
21 CHANNELS.—

22 (A) WITHDRAWAL FOR INSUFFICIENT
23 USE.—Notwithstanding paragraph (1)(C), an
24 eligible video service provider—

1 (i) is not required to carry a public,
2 educational, or governmental channel that
3 has less than 8 hours programming per
4 day; and

5 (ii) may terminate carriage of any
6 such channel and reprogram it not less
7 than 30 days after notifying the fran-
8 chising authority of its intended action.

9 (B) REINSTATEMENT.—An eligible video
10 service provider shall restore carriage of a pub-
11 lic, educational, or governmental channel the
12 carriage of which was terminated under sub-
13 paragraph (A) when the entity responsible for
14 the channel certifies that it is ready, willing,
15 and able to provide at least 8 hours of daily
16 programming for the channel.

17 (C) NONREPEAT PROGRAMMING REQUIRE-
18 MENT.—At least 4 hours of the programming
19 required to meet the 8 hours of daily program-
20 ming for a public, educational, or governmental
21 channel shall be nonrepeat programming.

22 (D) OPERATIONAL RESPONSIBILITY.—The
23 operation of a public, educational, or govern-
24 mental channel shall be the responsibility of the
25 entity operating the channel and not the re-

1 sponsibility of the eligible video service provider.

2 The responsibility of the eligible video service
3 provider is limited to carriage of the channel.

4 (5) DETERMINATIONS OF LOCAL SIGNALS.—

5 For purposes of complying with subparagraphs (C)
6 and (D) of paragraph (1), an eligible video service
7 provider shall treat as local stations, with respect to
8 a customer located within the jurisdiction of any
9 franchising authority, the same stations that are
10 treated as local television stations for a cable system
11 located within such jurisdiction as of the date of en-
12 actment of this Act.

13 (6) IMPLEMENTATION.—

14 (A) REGULATIONS REQUIRED.—Not later
15 than 90 days after the date of enactment of
16 this Act, the Commission shall prescribe regula-
17 tions to implement the requirements of para-
18 graph (1) that are no greater or lesser than the
19 obligations required by the specifically ref-
20 erenced provisions of the Communications Act
21 of 1934 (47 U.S.C. 151 et seq.).

22 (B) EFFECTIVE DATE OF REGULATIONS.—

23 The regulations required under subparagraph
24 (A) shall take effect 6 months after the date of
25 enactment of this Act.

1 (7) PREEMPTION OF INCONSISTENT FRANCHISE
2 TERMS AND STATE AND LOCAL LAWS FOR ELIGIBLE
3 VIDEO SERVICE PROVIDERS.—

4 (A) IN GENERAL.—Any provision in any
5 franchise granted by a franchising authority to
6 an eligible video service provider, and any provi-
7 sion of State or local laws, regulations, or rules,
8 that is inconsistent with the provisions of this
9 Act is preempted and superseded.

10 (B) TREATMENT AS AN ELIGIBLE VIDEO
11 SERVICE PROVIDER.—Subparagraph (A) does
12 not apply to a franchise agreement—

13 (i) that is in effect on the date of en-
14 actment of this Act; and

15 (ii) pursuant to which a cable oper-
16 ator that is not an eligible video service
17 provider is operating.

18 (8) CABLE CHANNELS FOR PUBLIC, EDU-
19 CATIONAL, AND GOVERNMENTAL USE.—The govern-
20 mental entity that was the franchising authority for
21 a State or a political subdivision of a State on the
22 date of enactment of this Act, and any successor en-
23 tity, shall for that State or political subdivision de-
24 termine which public, educational, or governmental

1 entities shall be authorized to designate the channels
2 required under paragraph (1)(C).

3 (9) CONSUMER PROTECTION AND CUSTOMER
4 SERVICE.—

5 (A) REGULATIONS REQUIRED.—Not later
6 than 90 days after the date of enactment of
7 this Act, the Commission shall promulgate reg-
8 ulations with respect to customer service and
9 consumer protection requirements of the eligible
10 video service provider.

11 (B) EFFECTIVE DATE OF REGULATIONS.—
12 The regulations required under subparagraph
13 (A) shall take effect 6 months after the date of
14 enactment of this Act.

15 (C) PREEMPTION.—The regulations pro-
16 mulgated under subparagraph (A) preempt any
17 statute, regulation, or rule of any State or polit-
18 ical subdivision thereof under which liability
19 would be imposed on an eligible video service
20 provider for failure to comply with any statute,
21 regulation, or rule in pari materia with those
22 regulations, other than State laws that are not
23 specific to customer service and consumer pro-
24 tection requirements of the video service pro-
25 vider.

1 (10) STATE AND LOCAL GOVERNMENT AUTHOR-
2 ITY.—

3 (A) IN GENERAL.—Notwithstanding any
4 other provision of this Act, a State or local gov-
5 ernment shall have the authority to enforce the
6 requirements of paragraph (9)(A).

7 (B) LOCAL POINT OF CONTACT.—Each
8 State or local government shall designate a
9 local point of contact, which residents of such
10 geographic area may contact to alert such State
11 or local government of any potential violations
12 of the requirements and obligations established
13 under paragraph (9)(A).

14 (C) LIMITATION ON CLASS ACTIONS.—No
15 class action alleging a violation of the obliga-
16 tions set forth in the regulations promulgated
17 by the Commission under paragraph (9)(A)
18 shall be maintained under this subsection by an
19 individual or any private party in Federal or
20 State court.

21 (D) PARENS PATRIAE AUTHORITY.—In
22 any case in which a State or local government
23 has reason to believe that an act or practice vio-
24 lates the obligations set forth in the regulations
25 promulgated by the Commission under para-

graph (9)(A), the State or local government may bring a civil action on behalf of the residents within its jurisdiction in a district court of the United States of appropriate jurisdiction, or any other court of competent jurisdiction, to—

(i) enjoin the act or practice;

(ii) obtain—

(I) damages in the sum of actual damages, restitution, or other compensation on behalf of affected residents of the State or locality; and

(II) punitive damages, if the violation is willful or intentional; or

(iii) obtain such other legal and equitable relief as the court may consider to be appropriate.

(E) LIMITATION.—In enforcing the requirements of paragraph (6), a State or local government may not impose additional obligations beyond those established by the Commission in paragraph (9)(A).

(d) COMMISSION TO ACT IF STATE COMMISSION

WILL NOT ACT.—If a State or local government fails to

1 carry out its enforcement responsibilities under subsection
 2 (c)(7), the Commission shall—

- 3 (1) issue an order preempting the jurisdiction
- 4 of the State commission; and
- 5 (2) assume exclusive enforcement authority.

6 (e) ABILITY TO MANAGE PUBLIC RIGHTS-OF-WAY.—

7 (1) IN GENERAL.—Except as provided in this
 8 section, nothing in this Act shall affect the authority
 9 of a State or local government to manage the public
 10 right-of-way in a manner that is—

- 11 (A) non-discriminatory;
- 12 (B) competitively neutral;
- 13 (C) consistent with applicable State law;
- 14 and
- 15 (D) not inconsistent with this Act.

16 (2) CONSTRUCTION PERMITS.—

17 (A) IN GENERAL.—In managing the public
 18 rights-of-way a State or local government may
 19 require the issuance of a construction permit,
 20 without cost, to an eligible video service pro-
 21 vider that is locating facilities in such public
 22 right-of-way.

23 (B) RESPONSE WORK OR REPAIR.—If
 24 there is an emergency necessitating response
 25 work or repair in the public right-of-way, an eli-

gible video service provider may begin such work or repair upon obtaining any required permit or authorization without prior approval from a State or local government, if such provider notifies the State or local government as promptly as possible after beginning such work or repair.

(3) **TIMELY ACTION REQUIRED.**—In managing the public rights-of-way a State or local government that is required to issue permits or licenses for such use shall be required to act upon any such request for use in a timely manner.

(4) **NEW ROADS.**—Nothing in this section shall effect the ability of a State or local government to impose reasonable limits on access to public rights-of-way associated with newly constructed roads.

(f) **CONFORMING AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934.**—

(1) **POLE ATTACHMENTS.**—Section 224 of the Communications Act of 1934 (47 U.S.C. 224) is amended—

(A) in subsection (a)(1), by striking “local exchange carrier” and inserting “telecommunications carrier”;

1 (B) by striking subsections (a)(5) and
2 (d)(3);

3 (C) in subsection (d)(3), in the first sen-
4 tence by striking all after “cable television sys-
5 tem” through the period at the end and insert-
6 ing “and facilities of other video service pro-
7 viders, regardless of the nature of the services
8 provided.”; and

9 (D) by adding at the end the following:

10 “(j) WIRELESS SERVICE FACILITY EXEMPTION.—
11 Nothing in this section applies to a wireless service facil-
12 ity, including to towers of a provider of mobile services.”.

13 (2) CARRIAGE OF LOCAL COMMERCIAL TELE-
14 VISION SIGNALS.—Section 614(b)(4) of the Commu-
15 nications Act of 1934 (47 U.S.C. 534(b)(4)) is
16 amended to read as follows:

17 “(4) SIGNAL QUALITY.—

18 “(A) NON-DEGRADATION.—The signals of
19 local commercial television stations that a cable
20 operator carries shall be carried without mate-
21 rial degradation.

22 “(B) CARRIAGE STANDARDS.—The Com-
23 mission shall adopt carriage standards to en-
24 sure that, to the extent technically feasible, the
25 quality of signal processing and carriage pro-

1 vided by a cable system for the carriage of local
 2 commercial television stations will be no less
 3 than that provided by the system for carriage of
 4 any other type of broadcast local commercial
 5 television signal when using the same trans-
 6 mission technology.”.

7 (3) CARRIAGE OF NONCOMMERCIAL EDU-
 8 CATIONAL TELEVISION.—Section 615(g)(2) of the
 9 Communications Act of 1934 (47 U.S.C. 535(g)(2))
 10 is amended to read as follows—

11 “(2) BANDWIDTH AND TECHNICAL QUALITY.—A
 12 cable operator shall—

13 “(A) provide each qualified local non-com-
 14 mercial television station whose signal is carried
 15 in accordance with this section with bandwidth
 16 and technical capacity equivalent to that pro-
 17 vided to commercial television stations carried
 18 on the cable system when using the same trans-
 19 mission technology; and

20 “(B) carry the signal of each qualified
 21 local non-commercial educational television station
 22 without material degradation.”.

23 (4) REGULATIONS REQUIRED.—Not later than
 24 90 days after the date of enactment of this Act, the
 25 Commission shall prescribe such regulations as may

1 be necessary to implement the amendments made by
 2 this section.

3 (g) RULEMAKING ON SECTION 629.—Not later than
 4 January 1, 2008, the Commission shall conduct a pro-
 5 ceeding to determine the appropriateness of the require-
 6 ments under subsection (c)(1)(L) taking into account
 7 changes and advancements in technology.

8 **SEC. 4. BENEFIT OF NETWORK NON-DUPLICATION RULES**
 9 **TO BROADCASTERS.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
 11 sion of law, or any regulation promulgated by the Federal
 12 Communications Commission, if a local commercial tele-
 13 vision station is under common control with a cable chan-
 14 nel the station may not have the benefit of the Commis-
 15 sion's network program non-duplication rules in subpart
 16 F of part 76.92 of title 47, Code of Federal Regulations,
 17 unless the cable channel is made available to multichannel
 18 video programming distributors on an a-la-carte basis in
 19 addition to any other channel bundles it offers to sub-
 20 scribers.

21 (b) DEFINITIONS.—In this section:

22 (1) COMMON CONTROL.—A local commercial
 23 television station is considered to be under common
 24 control with a cable channel if—

1 (A) it is owned by a person that has an at-
 2 tributable interest in a cable channel; or

3 (B) is owned or controlled by a
 4 corporation or other legal entity the chairman
 5 or controlling shareholder of which—

6 (i) has an attributable interest in a
 7 cable channel; or

8 (ii) owns or controls a cable channel.

9 (2) LOCAL COMMERCIAL TELEVISION STA-
 10 TION.—The term “local commercial television sta-
 11 tion” has the meaning given that term in section
 12 614(h)(1) of the Communications Act of 1934 (47
 13 U.S.C. 534(h)(1))).

14 **SEC. 5. ALTERNATIVE DISTRIBUTION OUTLETS.**

15 Section 616(a)(2) of the Communications Act of
 16 1934 (47 U.S.C. 536(a)) is amended by striking “distribu-
 17 tors” and inserting “distributors, or against other video
 18 programming distributors using any medium or platform
 19 for such programming distribution (including the Inter-
 20 net),”.

21 **SEC. 6. FEDERAL COMMUNICATIONS COMMISSION TO AD-**
 22 **MINISTER.**

23 The Federal Communications Commission may pre-
 24 scribe such rules and regulations as may be necessary in
 25 the public interest to carry out this Act.

1 **SEC. 7. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
3 this Act, or the application of such provision or amend-
4 ment to any person or circumstance is held to be unconsti-
5 tutional, the remainder of this Act, the amendments made
6 by this Act, and the application of such provisions to any
7 person or circumstance shall not be affected thereby.

○